

022080SiH

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

JUN 10 1980  
10:30 a.m.

CLERK

*J. J. Jacobson*

IN RE )  
ADOPTION OF EARLY )  
IMPLEMENTATION OF THE )  
SANCTION PROVISIONS OF THE )  
SPEEDY TRIAL ACT OF 1974. )

ORDER

Pursuant to 18 USC §3174(c)(1) and with the concurrence of the planning group for this district and the approval of the Judicial Council of the Eighth Circuit,

It is

ORDERED

1. That the provisions of 18 USC §3162 in their entirety shall be applicable to all cases filed in this district subsequent to April 1, 1980.

2. Notice of the applicability of these sanctions shall be given to all defendants at their initial appearance before a judicial officer in this district.

June 10, 1980.

*Edward J. McManus*  
Edward J. McManus, Chief Judge  
UNITED STATES DISTRICT COURT

022080SiHFILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

JUN 10 1980

10:30 a.m.

CLERK

*Jorge Jacobson*

IN RE )  
 )  
MODIFICATION OF THIS COURT'S )  
 )  
SPEEDY TRIAL PLAN AND )  
 )  
APPROVAL OF EARLY )  
 )  
IMPLEMENTATION OF THE SANCTION )  
 )  
PROVISIONS OF THE SPEEDY )  
 )  
TRIAL ACT OF 1974. )

APPLICATION

COMES NOW the Honorable Edward J. McManus, Chief Judge of the United States District Court for the Northern District of Iowa and makes application for approval of the modification of its 1979 Plan pursuant to 18 USC §3165(d), a copy of which is attached, and implementation of the provision of 18 USC §3162 pursuant to 18 USC §3174(c)(1).

Modification of Existing Plan

The court requests approval of the modification of its 1979 Plan of the United States District Court for the Northern District of Iowa Pursuant to the Speedy Trial Act of 1974 and FRCP 50 contained in the attached plan. The modifications are designed to reflect the recent amendments to the Speedy Trial Act.

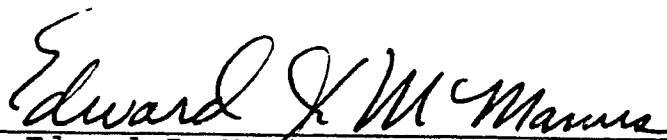
Early Implementation of the Provisions of §3162

On February 14, 1980 this district's planning group met and unanimously approved the early implementation of the provisions of §3162. Over the past twelve months close to 100% of the criminal cases in this district have been disposed

1, 1980 will have no significant effect upon this district's practices and procedures.

Attached is a proposed order for the early implementation of the sanctions.

March 18, 1980.

A handwritten signature in cursive script, reading "Edward J. McManus". The signature is written in dark ink and is positioned above a horizontal line.

Edward J. McManus, Chief Judge  
UNITED STATES DISTRICT COURT

# UNITED STATES COURTS

Judicial Council Of The Eighth Circuit  
United States Court And Custom House  
1114 Market Street  
St. Louis, Missouri 63101

## MEMBERS

Hon. Donald P. Lay, Chief Judge  
Hon. Gerald W. Heaney  
Hon. Myron H. Bright  
Hon. Donald R. Ross  
Hon. Roy L. Stephenson  
Hon. J. Smith Henley  
Hon. Theodore McMillian  
Hon. Richard S. Arnold

Lester C. Goodchild  
Circuit Executive

CCAO-21

## CIRCUIT COUNCIL

### ADMINISTRATIVE ORDER

This will certify that the Judicial Council of the Eighth Circuit has authorized the implementation of the provisions of Section 3162, Title 18, United States Code, in their entirety, effective April 1, 1980, in the District Court of the Northern District of Iowa and, further, has approved the amended Speedy Trial Act Plan for that District Court.



---

CIRCUIT EXECUTIVE

June 6, 1980  
St. Louis, Missouri

DISTRICT

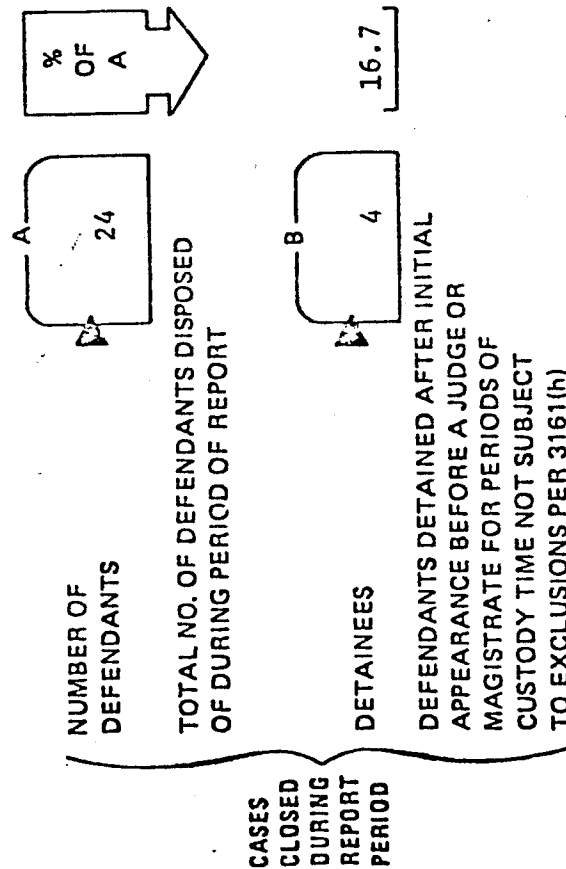
IOWA, NORTHERN

SPEEDY TRIAL DATA ANALYSIS 3166(b)(6) & (c)(6)

# PRETRIAL DETENTION

TABLE  
3

REPORT { 6 MONTHS - 1 JULY '79  
PERIOD THRU 31 DECEMBER '79



DEFENDANTS GROUPED BY LENGTH OF NET\* TIME  
IN CONTINUOUS DETENTION STATUS

NUMBER OF DETAINEES					% OF BOX B				
NUMBER OF NET DAYS									
1 to 10	11 to 30	31 to 90	91 to 120	121 to 150	151 Plus				
0	1	3	0	0	0	.0%	25.0%	75.0%	.0%
						.0%	.0%	.0%	.0%

\*"NET" IS GROSS TIME LESS EXCLUSIONS PER 3161(h).  
REPORT SHOULD INCLUDE ONLY DEFENDANTS HAVING  
NON-EXCLUDABLE ("NET") DETENTION TIME. WHEN  
DEFENDANT HAS MORE THAN ONE SUCH DETENTION  
PERIOD, INTERSPERSED WITH RELEASE TIME OR  
EXCLUDABLE TIME, DO NOT AGGREGATE THE  
SEPARATE DETENTION PERIODS. TAKE THE DEFEN-  
DANTS LONGEST SINGLE PERIOD OF "NON EXCLUD-  
ABLE" DETENTION AS THE BASIS FOR DETERMINING  
WHICH ONE OF THE ABOVE COLUMNS TO PUT HIM IN.

IOWA, NORTHERN

SPEEDY TRIAL DATA ANALYSIS (18 U.S.C. 3166c(1)(1))

PROCESSING TIME

Processing time for defendants whose cases were terminated during one year period  
January 1, 1979 through December 31, 1979NO. OF  
DEFENDANTS  
TERMINATEDSUBDIVIDED  
BY WHEN  
INTERVAL  
BEGANINTERVAL  
ONE  
(ARREST  
TO  
INDICT-  
MENT)

Before 1 July '79

On/After  
1 July '79

## HOW LONG IT TOOK TO BRING INDICTMENTS ON CRIMINAL DEFENDANTS #

NUMBER OF "NET DAYS THAT ELAPSED TO INDICTMENT OR INFORMATION FROM ARREST OR SERVICE OF SUMMONS

SAME DAY	1 to 30 days	31 to 35 days	36 to 45 days	46 to 60 days	61 to 90 days	91 to 120 days	121 days & over
DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED
%	%	%	%	%	%	%	%
2	1	-	-	-	-	-	-
66.7	33.3	-	-	-	-	-	-
3	-	-	-	-	-	-	-

SUBDIVIDED  
BY WHEN  
INTERVAL  
BEGANINTERVAL  
TWO  
(INDICT-  
MENT TO  
TRIAL)

Before 1 July '79

On/After  
1 July '79

## HOW LONG IT TOOK TO BRING CRIMINAL DEFENDANTS# TO TRIAL

Number of "Net Days that Elapsed to Commencement of Trial (or other disposition) from Indictment or (if later) First Appearance

SAME DAY	1 to 30 days	31 to 70 days	71 to 80 days	81 to 100 days	101 to 120 days	121 to 180 days	181 days & over
DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED	DEF'S REPORTED
%	%	%	%	%	%	%	%
1	34	12	1	-	-	-	-
2.1	70.8	25.0	2.1	-	-	-	-
48	10	6	5	2	-	-	-
11	66.7	33.3	-	-	-	-	-

## HOW LONG IT TOOK TO SENTENCE CRIMINAL DEFENDANTS #

NUMBER OF DAYS TO SENTENCE DATE FROM DATE OF CONVICTION

SAME DAY	1 to 30	31 to 45	46 to 60	61 & over
NO. DEF'S	No.	No.	No.	No.
%	%	%	%	%
38	10	5	2	1
67.9	17.9	8.9	3.6	1.8
56	-	-	-	-

FOR ALL  
PERSONS  
TERMINATED &  
SENTENCED  
DURING THE  
12 MOS. PERIOD

# THESE FIGURES DO NOT INCLUDE DEFENDANTS WHO BEGAN THE INTERVAL DURING THIS TIME BUT WHOSE CASES WERE PENDING AS OF DECEMBER 31, 1979

# DEFENDANT FIGURES DO NOT INCLUDE PETTY OFFENDERS, AND ALSO DO NOT INCLUDE JUVENILES, APPEALS FROM U.S. MAGISTRATE DECISIONS, RULE 20 TRANSFERS, OR DEFENDANTS WHOSE CASES WERE PENDING AT THE END OF THE YEAR

# NET MEANS GROSS DAYS LESS DAYS OF EXCLUDABLE TIME UNDER 18 USC 3161(h)

AMENDED AND MODIFIED  
PLAN  
of  
THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
PURSUANT TO  
THE SPEEDY TRIAL ACT OF 1974  
and  
RULE 50(b) OF THE FRCrP

10:30 a.m.  
Jorge Jacobson

I N D E X

	<u>Page</u>
I. APPLICABILITY.	
A. Offenses.	1
B. Persons.	1
C. Terms.	2
II. PRIORITIES IN SCHEDULING CRIMINAL CASES.	2
III. TIME LIMITS.	
A. Filing of an Indictment or Information.	2
B. Commencement of Trial.	3
C. Defendant in Custody and High- Risk Defendant.	10
D. Sentencing.	12
E. Juvenile Proceedings.	13
IV. PROCEDURES INTENDED TO FACILITATE PROMPT DISPOSITION OF CASES.	
A. Filing Charge.	13
B. Initial Appearance.	14
C. Arraignment.	14
D. Discovery.	15
E. Motions.	15
F. Pre-trial Memoranda.	16
G. Voir Dire.	19
H. Order to Report.	19
I. Miscellaneous Matters.	19
V. EXCLUDABLE TIME.	21
A. Special Exclusions.	21
B. Docket Sheet Entry.	22

I N D E X (cont'd)

	<u>Page</u>
V. EXCLUDABLE TIME (cont'd)	
C. Stipulations	22
D. Pre-Indictment Procedures	23
E. Post-Indictment Procedures.	24
F. Finding by Magistrate.	25
VI. SANCTIONS.	
A. Defendants in Custody.	26
B. High-Risk Defendants.	26
C. Alleged Juvenile Delinquents.	27
VII. RESPONSIBILITIES FOR MONITORING AND INSURING COMPLIANCE WITH TIME LIMITS.	
A. District Planning Group.	28
B. Clerk.	28
C. United States Attorney.	28
D. United States Marshal.	30
E. United States Magistrates.	31
VIII. EFFECTIVE DATE.	32



AMENDED AND MODIFIED  
PLAN  
of  
THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
PURSUANT TO  
THE SPEEDY TRIAL ACT OF 1974  
AS AMENDED TO JANUARY 1, 1980  
and  
RULE 50(b) OF THE FRCrP

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 USC Chapter 208), and the Federal Juvenile Delinquency Act (18 USC §§5036, 5037), the judges of the United States District Court for the Northern District of Iowa have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

I. APPLICABILITY

A. Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by United States Magistrates, except for petty offenses as defined in 18 USC §1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.

B. Persons. The time limits are applicable to persons or corporations accused who have not been in-

dicted or informed against as well as those who have, and the word "defendant" includes such persons or corporations unless the context indicates otherwise.

C. Terms. As used herein, all terms shall be defined as in 18 USC §3156 unless otherwise indicated.

II. PRIORITIES IN SCHEDULING CRIMINAL CASES. Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in Section III, E should be given preference over other criminal cases.

III. TIME LIMITS.

A. Filing of an Indictment or Information.

(1) Any information or indictment charging a person with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charge. If an individual has been charged with a felony and no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(2) For the purpose of this section an

arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a federal charge; (ii) is delivered to the custody of a federal official in connection with a federal charge; or (iii) appears before a judicial officer in connection with a federal charge, whichever occurs first.

(3) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date upon which arrest took place.

(4) Absent a contrary showing, a summons shall be considered to have been served on the date of service shown on the return thereof.

(5) A defendant who signs a written consent to be tried before a Magistrate shall, if no indictment or information charging the offense has been filed, be deemed indicted on the date of such consent.

B. Commencement of Trial.

(1) Time Limits. Unless a waiver and

consent to preparation of a presentence report is filed pursuant to FRCrP 32(c), the trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(a) The date on which an indictment or information is filed in this district;

(b) The date on which a sealed indictment or information is unsealed; or

(c) The date of the defendant's first appearance before a judicial officer of this district.

(2) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days.

(3) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, or fails to plead guilty after filing a waiver pursuant to FRCrP 32(c), the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final or on sentencing date.

(4) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge.

(b) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall

commence within the time limit for commencement of trial on the original indictment or information.

(c) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.

If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) Measurement of Time Periods. For the pur-

poses of this section:

(a) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the Clerk.

(b) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(c) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the procedure immediately follows.

(6) Related Procedures.

(a) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(b) The court shall have sole responsi-

bility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar.

(c) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(d) At the time of the filing of a complaint, indictment, or information described in paragraph (c), the United States Attorney shall give written notice to the



court of that circumstance and of his position with respect to the computation of the time limits.

(e) All pre-trial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

(7) Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information as provided above, the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not

begin to run. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances.

C. Defendants in Custody and High-Risk Defendants.

(1) Time Limits. Notwithstanding any longer time periods that may be permitted above, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(a) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(b) The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk.

(2) Definition of "High-Risk" Defendant. A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(3) Measurement of Time Periods. For the purposes of this section:

(a) A defendant is deemed to be in detention awaiting trial when he is arrested

on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(b) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(c) A trial shall be deemed to commence as provided in sections B(5) (b) and B(5) (c).

(4) Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest

practicable time of the date of the beginning of such custody.

(b) The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by him to be high risk.

(c) If the court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

D. Sentence. Except for good cause shown, a defendant shall be sentenced within 21 days of the date of

his conviction, plea of guilty or nolo contendere, or the filing of a waiver under FRCrP 32(c).

E. Juvenile Proceedings.

(1) Time Within Which Trial Must Commence.

An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 USC §5036.

(2) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 USC §5037(c).

IV. PROCEDURES INTENDED TO FACILITATE PROMPT DISPOSITION OF CASES.

A. Filing Charge.

(1) Unless otherwise ordered, no information or indictment shall be filed by the Clerk unless it is accompanied by a praecipe for a warrant or summons for each defendant or an executed waiver under FRCrP 32(c) and a completed AO 257 in the form required by the Clerk.

(2) At the time of filing superseding

charges under paragraph III, B(4), the United States Attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of time limits which may be made on the AO 257 as referred to in paragraph (1) above.

(3) When a case is to be transferred to this district under FRCrP 20, the United States Attorney shall cause a completed waiver under FRCrP 32 to be filed with the consent to transfer.

B. Initial Appearance. When an initial appearance is held on an information or indictment, the judicial officer shall promptly make arrangements to secure counsel for defendant and set a date for arraignment.

C. Arraignment.

(1) At arraignment the government shall be represented by counsel who is familiar with the case and who is prepared to make the disclosures required under this Plan.

(2) Unless otherwise ordered, counsel for the government shall at the time of arraignment give notice pursuant to FRCrP 12(d)(1) to the court and defen-

dant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objection to such evidence prior to trial under FRCrP 12(b)(3).

(3) When such a disclosure is made by the government the judicial officer conducting the arraignment shall inquire of defendant's counsel as to whether a motion to suppress is contemplated. If counsel indicates such a motion will be filed the judicial officer shall set a hearing date at that time.

D. Discovery. Immediately after arraignment, unless otherwise ordered, counsel for the government shall make himself available to meet with counsel for defendant for the purpose of disclosing all matters which the government will voluntarily disclose without order of court. If counsel for defendant chooses to meet with the government attorney and accepts disclosures of matters discoverable under FRCrP 16(A)(1)(A), (B), (C) and (D), then the government shall be entitled to similar discovery from defendant.

E. Motions.

(1) No discovery motions shall be

filed by defendant until he or his counsel has conferred with counsel for the government in accordance with paragraph D above. No discovery motion shall be filed by the Clerk unless it contains a statement of counsel that voluntary disclosure of the requested information has been refused.

(2) All pre-trial motions including but not limited to motions to suppress and motions under FRCrP 7, 12, 12.1, 12.2, 14, 16 and 41 shall be accompanied by a brief written statement of the legal authority relied upon and shall be filed no later than fourteen (14) days after arraignment. Except for good cause shown, the court will not extend the time for pre-trial motions beyond fourteen (14) days after the plea. Where the court finds that a motion is frivolous, or filed for delay, costs may be assessed against the party or the attorney filing such motion.

F. Pre-trial Memoranda. As soon as practicable after each criminal case is set for trial, and in no event not later than 5 days in advance of the date set for trial, the United States Attorney shall serve and file



with the Clerk a "TRIAL MEMORANDUM" embodying:

(1) a concise "PRE-TRIAL STATEMENT AS TO STATUS OF CASE" containing such information as (a) the date fixed for trial; (b) the government's estimate of the probable duration of the trial; (c) whether or not the accused is in custody or at liberty on bail, and the amount of bail and the form of security therefor; (d) whether an interpreter will be necessary; (e) whether it is proposed that jury be waived; (f) a brief summary of each offense charged with a copy of the indictment or information attached; (g) the briefest practicable quotation of the statute defining each offense charged; (h) the briefest practicable statement of the essential elements of each offense charged, set forth if practicable in the language of the statute; (i) a statement of the unusual issues of law, including any unusual questions of evidence or procedure, expected to arise at the trial, with a citation of any appropriate authority relative thereto which might be of assistance to the court; and (j) any requested instructions; and

(2) a "PRE-TRIAL OPENING STATEMENT" of the government's case containing a concise

recital, in chronological order if practicable, of all material facts which the prosecution expects will be established upon the trial, separately designating each fact in numerical or alphabetical sequence; and where the government expects to prove any fact in whole or in part by resort to any presumption, judicial notice, stipulation, confession, extra-judicial admission, or accusatory statement, it shall be so recited in parenthesis following the statement of such fact, with a citation of any appropriate authority therefor; but nothing herein or elsewhere in this order shall be deemed to compel pre-trial disclosure (unless otherwise required by law) of the number or identity of witnesses, or a description of documentary evidence, or of any matter intended to be used for purposes of impeachment or for rebuttal; and

(3) a statement advising counsel that the accused may, if so desired, serve and file a similar "TRIAL MEMORANDUM" at or prior to commencement of the trial.

(4) By not later than 2 days before the date set for trial, the United States Attorney shall

submit to the court the following:

(a) a list of witnesses in the order they are expected to be called.

(b) a list of all exhibits together with copies thereof unless otherwise directed. Information supplied pursuant to paragraph (a) and this paragraph need not be disclosed to defendant unless the court orders otherwise.

(c) Any witness or exhibit not listed and submitted will not be used at trial unless good cause is shown.

(5) All documents filed pursuant to this section shall be filed in triplicate.

G. Voir Dire. All requested voir dire questions shall be filed with the Clerk at least 3 days prior to the date set for trial.

H. Order to Report. When a criminal case has been affirmed on appeal and defendant is at large on bond, the Clerk shall, upon receipt of the mandate from the court of review, cause written notice to be sent to the defendant requiring him to surrender himself to begin his sentence within 10 days.

I. Miscellaneous Matters.

(1) Priorities in Scheduling. Individual

calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will not be grounds for a continuance or delayed setting except under circumstances approved by the court and called to the court's attention at the earliest practicable time. The United States Attorney will familiarize himself with the scheduling procedures of each judge and will assign or re-assign cases in such manner that the government will be able to announce ready for trial.

(2) Persons Serving Terms of Imprisonment.

(a) If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 USC §3161(j) and notify the court in writing of the

action taken.

(b) If a writ of habeas corpus ad prosequendum is necessary to secure defendant's presence at any stage of the proceedings, the United States Attorney shall file an application for said writ, together with a proposed order and writ with the Clerk. Nothing in this action shall be construed as limiting the court's power to issue a writ on its own motion.

V. EXCLUDABLE TIME.

A. Special Exclusions. In computing any time limits under this Plan the periods of delay set forth in 18 USC §3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under Section E(7).

(1) Further, because of the geographical makeup of this district, the ends of justice and the best interest of the public will be served by allowing the court an opportunity to accept or reject the plea with the benefit of a presentence report. The time between the filing of a waiver under FRCrP 32(c) and the formal acceptance or rejection of a plea will be excluded under

Section 3161(h)(8) in computing any time limits required under this Plan.

B. Docket Sheet Entry. The Clerk of Court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, the facts necessary for computing excludable time shall be reported to the Clerk by the United States Attorney.

C. Stipulations.

(1) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a co-defendant for the limited purpose of determining, under 18 USC §3161(h)(7),

whether time has run against the defendant entering into the stipulation.

(3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

D. Pre-Indictment Procedures.

(1) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in Section III, he may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 USC §3161(h)(8), he shall file a written motion with the court requesting such a continuance.

(2) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 USC §3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the

complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(3) The court may grant a continuance under 18 USC §3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

E. Post-Indictment Procedures.

(1) In the event trial is continued beyond the time limit set forth in this Plan, the judicial officer granting the continuance shall determine on the record whether the



limit may be recomputed by excluding time pursuant to 18 USC §3161(h). In the absence of a need for a continuance, the court will not ordinarily rule on the excludability of any period of time unless a request is filed in writing by the parties or Clerk.

(2) If it is determined that a continuance is justified, the judicial officer granting the continuance shall set forth in his findings in the record, either orally or in writing. If the continuance is granted under 18 USC §3161(h)(8), the judicial officer shall also set forth his reasons for finding that the ends of justice are better served by granting the continuance and therefore outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the government shall inform the court promptly when and if the circumstances that justify the continuance no longer exist.

F. Finding by Magistrate. All United States Magistrates for this district having a full range of duties are authorized to compute excludable time under this Plan. Any

request for a determination of excludable time made under this Plan shall be referred to a United States Magistrate unless otherwise ordered. The Magistrate shall then compute the excludable time and enter his findings in writing on the record. The Clerk shall forthwith mail copies of these findings to all parties. The parties shall then have 10 days from the filing of these findings to file written objections. If no written objections are filed within 10 days of the findings, they shall become final and be deemed adopted by the court without further action. If written objections are filed, the court shall review the Magistrate's findings in accordance with Local Rule 37.

VI. Sanctions.

A. Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pre-trial custody. Nothing in this Plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 USC §§3162 and 3164.

B. High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 USC §3164(b) shall, if the failure to commence trial was through no fault of the attorney for the govern-

ment, have his release conditions automatically reviewed. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under Chapter 207 of Title 18, USC, to ensure that he shall appear at trial as required.

C. Discipline of Attorneys. In a case in which counsel (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (2) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of the continuance, or (4) otherwise willfully fails to proceed to trial without justification consistent with 18 USC §3161, the court may punish such counsel as provided in 18 USC §§3162(b) and (c).

D. Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 USC §5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

VII. RESPONSIBILITIES FOR MONITORING AND INSURING COMPLIANCE  
WITH TIME LIMITS.

A. District Planning Group. As part of its continuing study of the administration of criminal justice in this district, the district planning group will pay special attention to those cases in which there is a failure to comply with the time limits set forth herein. From time to time, the group may make appropriate recommendations to prevent repetition of failures. When any member of the group becomes aware of a potential violation of the time limits under this Plan, they shall forthwith advise the Clerk of this fact in writing.

B. Clerk. In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts, the Clerk will from time to time report to the other members of the planning group each case in which there is a failure to comply with any time limit set forth herein. If the Clerk is advised of a potential violation of the time limits set out in this Plan under paragraph A above, he shall promptly send written notice to defendant's counsel and the United States Attorney of said fact. It shall then be defendant's burden to initiate such further action as is deemed proper.

C. United States Attorney.

(1) The United States Attorney shall, within

5 days after the close of reporting period, furnish each judge with a biweekly report of persons in custody. The Marshal shall provide such assistance as may be necessary in the preparation of the report. The report shall indicate the judge to whom each case has been assigned. The "Reason for Detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth herein.

(2) By not later than 3 business days before the close of every month the United States Attorney shall file a report of the status of all criminal cases pending in the district with the Clerk. This report shall include the case number, name of defendant and his present status and shall be in the form provided by the Clerk.

(3) Whenever a defendant is apprehended outside of this district, the United States Attorney shall forthwith advise the Clerk in writing of the date of arrest, the date of any hearing held or set, whether defendant has been released on bail or is in custody and

whether transfer under FRCrP 20 is contemplated. If a transfer under FRCrP 20 is contemplated to this district the United States Attorney shall promptly advise the Clerk in writing of the date when consent to transfer has been approved by the United States Attorneys for both districts and sent to the Clerk in the charging district.

D. United States Marshal.

(1) Upon the lodging of a detainer against an individual charged with an offense covered by this Plan, the Marshal shall file a copy of the detainer with the Clerk. If defendant is then taken into custody as a result of this detainer the Marshal shall forthwith notify the Clerk of this occurrence.

(2) When a defendant is arrested out of the district on a warrant issued in this court, the Marshal shall report the fact of the arrest in writing to the Clerk of the Court and United States Attorney by the close of the working day on which he has been made aware of the arrest.

(3) When a defendant has previously been held in custody for reasons other than

federal charges from this district, comes into custody solely as a result of charges from this district, the Marshal shall forthwith notify the Clerk in writing of this occurrence.

E. United States Magistrates.

(1) Each United States Magistrate shall notify the Clerk within 24 hours of appearance on indictment, information or complaint in this district regarding the following information (and subsequently forward papers to the Clerk):

(a) bail status and defendant's address;

(b) status of counsel;

(i) whether defendant needs court appointed counsel for proceedings and whether financial eligibility for appointment has been established or the name and address of counsel, if appointed at initial appearance;

(ii) whether retaining counsel, and if so, name and address;

(iii) if waiving counsel for

all proceedings.

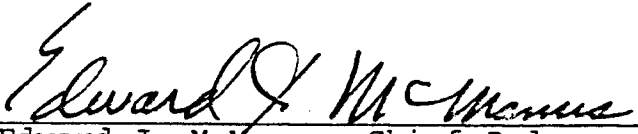
(c) date of arrest and initial appearance.

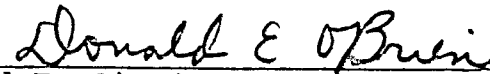
(d) If the appearance is upon an indictment in this district, the Magistrate shall set a date for arraignment at the time of the initial appearance.

VIII. EFFECTIVE DATE.

Upon approval of the reviewing panel designated in accordance with 18 USC §§3165(c) and (d), 3124(c)(1) and Rule 50(b) of the Federal Rules of Criminal Procedure, the time limits and procedures set forth herein shall become effective on April 1, 1980 and shall supersede those previously in effect.

Date: April 1, 1980.

  
\_\_\_\_\_  
Edward J. McManus, Chief Judge  
UNITED STATES DISTRICT COURT

  
\_\_\_\_\_  
Donald E. O'Brien, Judge  
UNITED STATES DISTRICT COURT